

EXHIBIT 1

JOHN CONYERS, JR., Michigan
CHAIRMAN

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
WILLIAM D. DELAHUNT, Massachusetts
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LUIS V. GUTIERREZ, Illinois
TAMMY BALDWIN, Wisconsin
CHARLES A. GONZALEZ, Texas
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SANCHEZ, California
DANIEL B. MAFFEI, New York
JARED POLIS, Colorado

LAMAR S. SMITH, Texas
RANKING MINORITY MEMBER

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
DARRELL E. ISSA, California
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
THOMAS ROONEY, Florida
GREGG HARPER, Mississippi

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

August 9, 2010

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
Washington, DC 20530-0001

Re: Notice of whether the Attorney General intends to appeal *Gill v. Office of Personnel Management*, No. 09-10309-JLT (D. Mass. July 8, 2010) and *Commonwealth v. United States Department of Health and Human Services*, No. 09-11156-JLT (D. Mass. July 8, 2010).

Dear Attorney General Holder,

As Ranking Member of the House Judiciary Committee, I write to urge the Department of Justice to appeal the decisions in *Gill v. Office of Personnel Management*, No. 09-10309-JLT (D. Mass. July 8, 2010) and *Commonwealth v. United States Department of Health and Human Services*, No. 09-11156-JLT (D. Mass. July 8, 2010). Both decisions declared unconstitutional Section 3 of the Defense of Marriage Act, which defines "marriage" as between a man and a woman and "spouse" as a member of the opposite sex for purposes of federal law.

The Defense of Marriage Act was passed by an overwhelming majority of both houses of Congress and signed into law by President Clinton in 1996. As such, I believe an appeal of the decisions is warranted and urge you to direct the Department of Justice attorneys assigned to these cases to file notices of appeal to the First Circuit Court of Appeals.

As you are aware, the Attorney General is required to "submit to the Congress a report of any instance in which the Attorney General or any officer of the Department of Justice" determines "not to appeal or request review of any judicial, administrative, or other determination adversely affecting the constitutionality of any such provision [of Federal law]."¹ The report must be served on the Congressional leadership, including me as "the ranking

¹ 28 U.S.C. § 530D(a)(1)(B)(ii).

The Hon. Eric H. Holder

Page Two

August 9, 2010

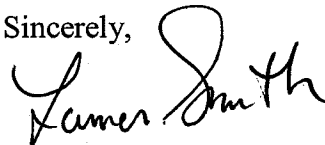
minority member of the Committee on the Judiciary of the House of Representatives.”² The report must be submitted within such time as will “reasonably enable” either house of Congress “to intervene in a timely fashion in the proceeding.”³

Under the reporting statute, I believe we have passed the point at which reporting a conclusion not to appeal these decisions can be timely, because the cases were decided on July 8, 2010, over 20 days ago. A motion to intervene in this case must be made within the 60-day time period provided under Federal Rule of Appellate Procedure 4 (a)(1)(B), which leaves 40 days for that purpose.⁴ As the U.S. House of Representatives is currently in recess, it could not reasonably resolve to intervene, even if the Department submitted its report now.

To avoid any misunderstanding of your intentions, please have the Office of Legislative Affairs contact Paul Taylor, Republican chief counsel of the Constitution Subcommittee, at (202) 225-7157 by Friday, August 13, 2010, to confirm that the Department of Justice has filed or will file notices of appeal in both cases.

Thank you for your attention to this important matter.

Sincerely,



Lamar Smith
Ranking Member

cc: The Hon. John Conyers, Jr.
Neal Katyal, Esq., Acting Solicitor General

² 28 USC § 530D(a)(2)(C).

³ 28 USC § 530D (b)(2).

⁴ See, *United Airlines, Inc., v. McDonald*, 432 U.S. 385, 396 (1977).